

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

Affiliated with AFL-CIO

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**STATEMENT OF  
NATIONAL PRESIDENT KENNETH T. BLAYLOCK  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

**AND**

**PUBLIC EMPLOYEE DEPARTMENT (AFL-CIO)**

**HEARING BEFORE**

**THE HOUSE ARMED SERVICES COMMITTEE INVESTIGATIONS**

**SUBCOMMITTEE ON INVESTIGATIONS**

**H.R. 4681 - THE FEDERAL POLYGRAPH LIMITATION  
AND ANTI-CENSORSHIP ACT OF 1984**

**September 6, 1984**

Mr. Chairman, my name is Kenneth T. Blaylock. I appear here today in my dual roles, as President of the American Federation of Government Employees, AFL-CIO and as President of the Public Employee Department, AFL-CIO. I am pleased to have the opportunity to share with you our views in support of passage of H.R. 4681, "The Federal Polygraph Limitation and Anti-Censorship Act of 1984" introduced by the Honorable Jack Brooks.

The requirement of pre-publication censorship and the expanded random use of unreliable polygraph examinations are issues that the Federal worker is very concerned about.

As you know AFGE has presented testimony on three prior occasions on the use of polygraphs and pre-publication review. On April 21, 1983, AFGE testified before a Joint Hearing conducted by the House Committee on Post Office and Civil Service's Subcommittee on Civil Service and Constitutional Rights. On October 19, 1983, AFGE presented testimony on this same issue before the House Committee on Government Operations Subcommittee on Legislation and National Security. Finally, on February 29, 1984, AFGE specifically addressed the provisions and need for H.R. 4681 before the House Committee on Post Office and Civil Service.

On all the previous occasions, AFGE presented factual evidence that President Reagan's directive on Safeguarding National Security Information, which was meant to implement widespread usage of polygraph examinations and pre-publication review, was not only unjustified but notoriously unreliable. On October 19,

1983, AFGE strongly recommended that legislation be enacted which would stop agencies from implementing the President's directive. This February AFGE testified in favor of H.R. 4681.

It is interesting to note that just two weeks after Representative Brooks introduced H.R. 4681 which would block administration efforts to expand the use of polygraphs and pre-publication agreements, the White House suddenly announced that President Reagan had decided to suspend, at least until after the November 6 elections, and possibly permanently, those parts of the directive requiring pre-publication review and polygraph examinations. AFGE firmly believes, contrary to Ambassador McFarland's and General Stilwell's assertions, that the President's failure to permanently cancel the directive strongly indicates his desire to pursue these issues, if he is re-elected, after pressures from the electorate and his need to justify this very unwise directive are taken off his shoulders. So too, individual agencies such as the Department of Defense may still feel free to pursue their announced plans to increase their use of polygraphs.

For this reason, AFGE is as convinced as ever that H.R. 4681 must be pursued at this time and implemented into law if the federal workforce is to be permanently protected from the dangerous "Big Brother" tendencies of agency managers who may or may not have serious indiscretions to hide from the public. In this regard, H.R. 4681 is a well-balanced proposal that would at Section 3 of the Bill protect and codify the Government's need to

investigate unauthorized disclosures of classified information, and yet, would also prevent employees from losing their employment for refusing to submit to a totally unreliable polygraph process. A process that has been documented by the Department of Defense in one study as failing to detect 20-50 percent of deceptive subjects, failing to detect 23-48 percent of truthful subjects, and being inconclusive another 7-27 percent of the time.

The expanded use of unreliable polygraph examinations is both an unwarranted intrusion in the private lives of loyal, hard-working federal employees and another effort by the current administration in its unrelenting war on the pay, benefits, rights, and even the very spirit of these dedicated Americans who serve their country by working for the federal government. Make no mistake --- federal employees know quite well that the Reagan administration's polygraph program is an effort to pry into their private lives (in a way barred even to corporations by numerous state laws) and to further terrorize these employees into forgetting their duty as citizen-employees to carry out their responsibilities. At the same time, the Reagan administration has stacked agency management with an unprecedented number of political appointees whose purpose, frequently, is not the enforcement of the laws enacted by Congress, but the obstruction of those laws.

What current crisis, we ask, is so grave as to prompt the administration's call for this massive intrusion into the private

lives and thoughts of federal employees? What evidence has the administration produced that would justify its ongoing threat of expansion of polygraph use? We submit that the threat of unreliable polygraphs and pre-publication review agreements is a sword that this administration intends to hang over the head of its dedicated workforce until the current election pressures pass, at which time if the present Chief Executive remains in office, the sword will surely be wielded to cut off the threat of embarrassing disclosures involving waste, fraud, mismanagement, and corruption.

For this reason, it is imperative that Congress take immediate action to pass H.R. 4681 which would permanently block this or any future President unwise enough to head down the dangerous road of censorship and coerced unreliable lie detector tests in a society that prides itself above all on freedom and fairness.

Because the administration has merely temporarily "suspended" its March directive rather than permanently cancelling it, it is necessary that we discuss the "pending" general administration polygraph program and then address some specific concerns about the new regulation on polygraph use which the Department of Defense has issued and may yet be foolish enough to pursue.

Our testimony concludes with our comments on the current need for Congress to enact H.R. 4681 to ensure that the federal workforce is permanently protected from these dangerous and controversial programs.

THE REAGAN ADMINISTRATION'S PROGRAM

On March 11, 1983, President Reagan issued a directive entitled "Safeguarding National Security Information". While AFGE heartily supports the need to safeguard properly classified national security information, it is our belief that this directive is not designed to protect national security interests. Rather, it is designed to suppress federal employee disclosure of governmental corruption, waste, inefficiency and fraud.

While the directive begins by citing the fact that only national security information should be classified, it goes on to state that each agency shall develop procedures governing disclosures which "the agency considers to be seriously damaging to its mission." Accordingly, under the directive, agency managers could consider disclosure of agency corruption, mismanagement, fraud, inefficiency, waste, etc., embarrassing and, therefore, damaging to the ability of the agency to accomplish its mission.

In proper context, "agency mission" has nothing to do with national security. Nevertheless, the directive mixes the two concepts as if they were interchangeable.

In 1978, Congress enacted the Civil Service Reform Act and declared that whistleblowing is legitimate, lawfully protected, beneficial to the taxpayer, and should be encouraged. The President's directive would have a chilling effect on federal employee whistleblowing and the right of the federal taxpayers to know what their government is doing.

The President's directive for the first time provides that

employees outside of the traditional national security agencies shall be subject to polygraph tests. While the fact sheet is- sued with the Presidential directive praises the test as a legitimate investigatory technique already utilized by intelligence agencies, such polygraph tests have been consistently rejected by federal and state courts as inadmissible for lack of scientific foundation and reliability. In 1981, Wisconsin, which had previously allowed the limited admission of polygraph evidence, outlawed the introduction of polygraph evidence for any purpose. In addition, implementation of such a procedure would cost the taxpayer untold dollars as Uncle Sam foots the bill for the machinery and personnel to administer these inadmissible tests. In this regard, I would direct your attention to, The Use of Polygraphs and Similar Devices by Federal Agencies, Hearings Before the Committee on Government Operations; 93rd Congress, June 4 and 5, 1974. The Department of Defense funds allocated to hire 50 additional polygraph operators for 1984, documented in GAO Report B-215075, would be better spent in hiring additional contract auditors and investigators to review the mammoth waste and fraud being perpetrated on the United States by unscrupulous Defense contractors. It is this fraud and waste by contractors with unhealthy connections to the Pentagon which is truly a threat to the security of this Nation.

While the White House fact sheet asserts that "existing procedural safeguards for personnel actions involving federal employees remain unchanged," the directive fails to acknowledge

that it is establishing a whole new basis for firing federal employees. The directive specifically provides that agencies shall develop rules by which employees may be fired if they refuse to take a polygraph test, or once having been hooked upto a polygraph machine, wish to assert their Fifth Amendment right against self-incrimination. Indeed, not only is this a new basis for firing federal employees, it contradicts existing civil service regulations which prohibit non-national security intelligence agencies from firing federal employees for refusing to take polygraph tests. I refer to FPM Chapter 736, Appendix C.

Moreover, even the Merit Systems Protection Board (which is not known for being pro-employee) has ruled that an employee's refusal to take a polygraph test may not be used as an inference of an employee's guilt. It did this in Meier v. Department of the Interior, 3 MSPB 341 (1980).

There are, at present, numerous laws prohibiting disclosure of sensitive information. Some are: 18 USC §798 (Disclosure of Classified Information), 18 USC §793 (Gathering, Transmitting, or Losing Defense Information), 42 USC §2274 (Communication of Restricted Data), 42 USC §2277 (Disclosure of Restricted Data), and 50 USC §783(b) (Offenses, Communication of Classified Information by Government Officer or Employee).

The White House fact sheet issued with the directive states, "although unauthorized disclosure of classified information potentially violates a number of criminal statutes, there has never been a successful prosecution." Clearly, therefore, this

assertion is evidence that the intent of the directive is to scare employees, rather than address a substantial problem. If the fact sheet's assertion regarding the lack of successful prosecution of security violations is correct, this directive is clearly an attempt to end-run, rather than to address, existing legitimate criminal procedures necessitated by the due process clause of our Constitution.

Our concern that the directive is designed to have a chilling effect on legitimate employee whistleblowing and fraud busting rather than improve national security is augmented by the fact that the White House fact sheet states that the FBI will be used to investigate violations of the directive even where there is absolutely no intention of, or foundation for, bringing a criminal case.

The use of the FBI in administrative personnel matters such as these, if not illegal, is certainly overkill which cannot help but have a chilling effect on federal employees and the rights of our citizens in general.

As noted earlier, the White House Fact Sheet issued with the President's directive stated:

The directive establishes a new approach to investigating unlawful disclosure to replace the past practice of treating such matters as purely criminal investigations. Although unauthorized disclosures of classified information potentially violate a number of criminal statutes, there has never been a successful prosecution. There are a number of practical barriers to the successful criminal prosecution in most of these cases.

Yet the President has never come before Congress for legisla-

tion. Rather, by a stroke of the pen he has ordered his Director of Office of Personnel Management to develop new regulations authorizing the federal government's use of polygraph tests for all federal employees who could have access to classified documents or documents which could be politically embarrassing to the administration. At a time when an increasing number of states have passed laws restricting the use of polygraph tests in connection with employment because such tests are unreliable, unfair, and an invasion of privacy, the President has ordered the Director of OPM (who has already turned OPM into a shambles) to undo present government regulations against polygraph tests. Director Devine has been told to create regulations which, "as a minimum ... shall permit an agency to decide that appropriate consequences will follow an employee's refusal to cooperate with a polygraph examination. ..." Drawing an adverse inference against a presumably innocent employee for his refusal to undergo an unreliable and degrading polygraph examination has grave Constitutional overtones, and, further, leads us one step closer to the nightmare of George Orwell's "1984".

As a citizen, I am embarrassed that the President of the United States would callously subject federal employees to harassing, humiliating, unreliable and unscientific polygraph tests in order to stop leaks that really have nothing to do with national security --- and which the White House admits don't really warrant criminal investigation and prosecution.

In our Bill of Rights, the Fourth Amendment guarantees, "The right of the people to be secure in their persons, houses, paper and effects against unreasonable searches and seizures ..." It would be ironic if under the Fourth Amendment we limited an employer's rights to search workers' desks, purses and homes, but not their minds for political affiliations, beliefs, or opinions.

The Sixth Amendment secures the right to confront one's accusers, but as former Senator Sam Ervin of North Carolina, noted commentator on constitutional law, observed about polygraphs, "it's hard to cross-examine a machine." Lie detectors are banned from most courtrooms precisely because judges and juries cannot question the devices, because they are not scientifically reliable, and because, with our awe of high tech devices, people tend to give absolute credence to polygraph results which even the most fervent proponents of polygraph admit are not infallable.

Often it is not the physiological test data that prejudices an employee; rather, it is confused statements, made under the duress of an exam, that are misinterpreted as incriminating.

If this directive is implemented as proposed, federal workers would not even have the dignity and protections routinely granted a suspect in the criminal courts.

In virtually every jurisdiction in this country, be it state or federal, a polygraph examination (if in the rare case it is admissible at all) will only be admitted after an expert has

testified as to the validity of the polygraph in general and the actual procedure that took place in that individual case. The expert is subject to cross-examination where the fallacies of polygraph infallability will be exposed to the trier of fact.

In employee discipline cases the Merit Systems Protection Board has approved of the exclusive use of hearsay evidence by an agency to support its case. AFGE expects to see cases where, if Congress does not act now to prevent it, agencies blindly submit unsupported polygraph examinations and leave it to the accused employee to rebut the agency's case with costly expert witnesses paid for by the employee. The costs of defending a polygraph case would be crushing to the accused employee. If the employee could afford the cost of defense, victory would be made hollow by the staggering costs of defending him or herself from an unreliable polygraph test.

As a citizen, I am appalled that a President who asserts that he is in favor of employee solidarity and human rights abroad proposes to subject his fellow federal employees to the sort of harassment that we have condemned behind the iron curtain and in the private sector here at home.

#### THE DOD REGULATIONS ON POLYGRAPHS

According to GAO Report B-215075 issued June 11, 1984 the Department of Defense has given over 25,000 polygraph tests from 1981 through 1983. The number of tests per year is climbing at an alarming rate.

AFGE yields first place to no one its commitment to the

national security of the United States. Time and again we have testified at Congressional hearings urging that appropriate steps be taken to safeguard the public welfare and provide for the common defense.

We reject, however, the suggestion that some new crisis in national security requires the Department of Defense to issue a new regulation expanding the use of unreliable polygraphs on its employees and applicants for employment. The Department has simply failed to demonstrate any need for such expanded use of the polygraph.

It is with great satisfaction and hope that I note that even before the President's directive was issued, Members of Congress were expressing concern and writing to the Secretary of Defense and elsewhere objecting to DoD practices involving polygraph tests.

In his letter to Secretary Weinberg, Chairman Brooks stated:

The Defense Department's proposed plan to expand greatly its use of polygraphs is of great concern to me.

Polygraph evidence is generally reviewed with skepticism because of its questionable reliability. The Committee on Government Operations raised this concern in reports issued in 1964 and 1965 and recommended that the device not be used at least until such time as objective studies demonstrate its reliability. DoD has not proven the validity and reliability of the polygraph prior to development of the proposed new guidelines, which broaden its use even further.

The proposed use could well affect the concept of individual privacy; indeed, several states prohibit even private corporations from using the polygraph as an employment screening device. Of great concern is the fact that the proposed guidelines would allow for adverse actions to be taken against em-

ployees that refuse a polygraph examination  
...

The Defense Authorization Act for FY 1984 (Pub.L. 98-94) contained a ban on implementation of new polygraph regulations in DoD until April 15, 1984.

The new DoD regulation would authorize use of polygraphs for pre-employment examination of applicants for DoD positions and random (or periodic) examinations of current employees. Such use is particularly shocking because it is in these areas where polygraph results are least reliable. We know of no persuasive scientific evidence that would support the use of polygraphs in random or pre-employment situations. The DoD regulation attempts to link polygraph use to national security concerns. Yet, in this sensitive area, the Select Committee on Intelligence of the House of Representatives determined in 1979 that polygraph use in national security "screening" had no scientific basis.

Indeed Lawrence J. Korb, Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, in a memorandum written on August 16, 1983 stated:

I think it is now clear that there is no scientific evidence to support claims of high polygraph accuracy. At a minimum, I think that the advocates of this program should be required to demonstrate scientifically the accuracy of their machine. I believe that use of the polygraph should not be expanded until that evidence is provided. My second concern is with the impact expanded polygraph use will have on morale within the Department. As you know, the vast majority of the people who work for the Department are dedicated, honest, and loyal. To subject these people to a polygraph test which, I am

sure, is embarrassing and degrading will harm morale throughout the Department. This is particularly true if, as I expect, the random review process excludes high ranking people and if, as evidence already suggests, there is a significant tendency for innocent people to be incorrectly classified as deceptive. My final concern is with the public and Congressional perception of this policy. ... Certainly we have seen that our justification for the increased use of the polygraph is not accepted by the Congress and the press. While we have argued that the change is to catch spies and stop leaks, the perception is that the change is to prevent political embarrassment.

The national security of the United States is simply too important to rely on an investigative technique with such a large margin of error and confusion. This is not just AFGE's opinion. The House Committee on Post Office and Civil Service in the August 6, 1984 report No. 98-961 cites the views of Dr. John Beary III, former Acting Assistant Secretary of Defense for Health Affairs and a recent student of polygraphs, regarding how dangerous for national security reasons misplaced faith in a polygraph could be. Dr. Beary, now Associate Dean at Georgetown University Medical School, concluded from his study that the polygraph is unreliable and warned the Pentagon that its reliance on the polygraph was endangering rather than protecting national security.

Dr. Beary wrote at least two memoranda, on December 16, 1982, and January 11, 1983, to the Deputy Secretary of Defense complaining about the scientific deficiencies of polygraphs. Dr. Beary told hearings of the Subcommittee on Legislation and National Security of the Committee on Government Operations,

chaired by Representative Jack Brooks, that polygraphs were used for "the placebo response." He said:

Because most citizens are scientifically naive, some confess to things when hooked up to the polygraph because they believe it really can detect lies. However you don't get something for nothing. The innocent people whose careers are damaged by the machine are the price paid for these placebo-induced confessions.

Dr. Beary summarized the views he expressed within the Pentagon by telling the Brooks subcommittee:

This machine cannot tell who is lying and who isn't. ... If you don't confess, you are never going to get caught by this thing. I would suspect, judging by the number of people and the security lapses we have had at CIA and other places where they use the polygraph, that people are getting through. Things are happening even though they are being screened on this. So, if it doesn't work yet your people think it does, your managers think it does, then you have a spy sitting there comfortably who is home free. Once you pass that, people pretty much forget about you in this context.

The new DoD regulation is couched in terms clearly designed to give the appearance of concern for employee rights. One glaring omission, however, gives a clear prophesy of how the other "paper concerns" would in fact be handled in the real world. The regulation provides that an employee should be warned of the constitutional privileges against self-incrimination and informed that the polygraph examination may be stopped at any point. However, the refusal to answer or to continue the session could be used to deny employment or assignment. The regulation fails to meet the constitutional requirement,

outlined in Kalkines v. U.S., and recently affirmed in Weston v. HUD, that the employee be given criminal immunity for answering the question (but then be required to answer) or be told that the refusal to answer or continue the examination, absent such immunity, may not be used as grounds for adverse action against the employee.

This remarkable insensitivity to the rights of employees (so typical of this Administration's war on federal employees) gives us a good hint of how sensitively DoD will in fact carry out the other provisions in the regulation which on paper provide a limited degree of protection against polygraph abuses.

Of course, everything in the regulation supports the prime abuse of polygraphs -- namely, the use of those unreliable machines to intrude into the private lives and thoughts of American citizens. In this regard, I note that polygraph operators are required to ask their subjects so-called "control" questions. Frequently, these so-called control questions intrude into areas of employees' private lives. These questions, in order to serve their so-called "control" function, must be unrelated to the subject of the employment investigation. In other words, these questions will inevitably intrude into areas other than the area of investigation and they will intrude into personal areas where the government must not tread.

It is significant also that eighteen states currently have outright prohibitions on employers requiring polygraph testing of their employees. It is questionable whether in the absence

of federal legislation a mere Presidential directive or Defense regulation can preempt these existing state laws.

The FBI and the various intelligence agencies have personnel designated to administer polygraph tests. However, under the administration's intended program, given its government-wide effect, OPM and the employer agencies would find it necessary to develop staff capabilities or contract out to implement this effort. Indeed, the DoD alone plans on employing 50 additional polygraph operators according to GAO Report B-215075.

Currently, in the private sector less than one percent of polygraph testers have had any scientific training; fewer still have received any education in the behavioral sciences. In fact, certain polygraphers have estimated that fully 80 percent of their own colleagues are incompetent.

There are twenty different state laws regarding polygraph operator standards, all of which have a long history of abuse. State licensing of polygraphers is not reliable. The standards set by these various laws are much too low. Even the model statute (Illinois) demands no more than a bachelor's degree in any subject. Any diploma, be it in Modern Art, Literature, or even Egyptology, satisfied that criteria. No psychological or scientific training is required.

Is the federal government going to step in and establish nationwide polygraph operator standards so that its employees who would be designated to give the tests would do so in some standardized and reasonably reliable manner?

In 1974, with the passage of the Privacy Act, Congress created a Privacy Protection Study Commission. The Commission's final report in 1977 took a very strong stand against the use of "truth verification" devices, calling their use "an unreasonable invasion of privacy that should be summarily proscribed." The Commission recommended that a federal law be enacted to forbid an employer from using these devices to gather information from an applicant or employee. The Commission also asked the Congress to implement this recommendation by a statute that bans the manufacture and sale of truth verification devices.

Congress has, over the years, demonstrated that there are limits to the harassing conditions that employers can impose on employees. Assaults on constitutional rights, on fundamental human dignity, should not be tolerated at any time. They spread too easily.

Former Supreme Court Justice Louis Brandeis, said "(the) most comprehensive of rights and the right most valued by civilized men" is the simple right to be left alone. Lie detector tests deny workers the right to be left alone.

It would seem that the current administration's obsession about leaks is reminiscent of former President Nixon's similar obsession. This administration appear to have wholeheartedly adopted President Nixon's strategy on polygraphs about which Mr. Nixon reportedly said: "Listen, I don't know anything about polygraphs, and I don't know how accurate they are, but I do know that they'll scare the hell out of people."

This administration, rather than adopting thorough investigatory techniques and utilizing existing criminal penalties seems determined instead to "scare the hell out of people".

PRE-PUBLICATION REVIEW, NONDISCLOSURE

AGREEMENTS AND CONTACTS WITH MEDIA REPRESENTATIVES

The Presidential Directive also requires employees who have access to classified information to submit any outside writings for prepublication review -- even if those writings are not related to classified information. In addition, the Directive would require employees to sign nondisclosure agreements which would be enforceable in court. Finally, the Directive instructs agencies to adopt policies "governing contacts between media representatives and agency personnel..." -- a clear and present danger to the freedoms of speech and the press guaranteed by the First Amendment and the whistleblower protections of the Civil Service Reform Act.

The directive thus seeks to enforce a threat of legal action to be held over the heads of federal employees in cases where the Department of Justice apparently would not see any legitimate basis for criminal action, even though a violation of current law governing disclosure of classified material constitutes grounds for criminal action.

The issue of pre-publication agreements allowing agency review of proposed speech raises the constitutional issue of

prior-restraint which the Supreme Court has outlawed, with only limited exceptions, as far back as 1931 in Near v. Minnesota. More recently the Court refused a government attempt to stay publication of the "Pentagon Papers" in the 1971 case of New York Times v. U.S. These cases show a constitutional antipathy for governmental prior restraint of First Amendment rights.

Again we ask, what is the pressing need for employees to sign quasi-contractual documents which could later be the basis for their termination if their actions do not constitute a violation of existing law governing illegal disclosure of classified materials? What is the deficiency in the existing law that requires correcting? Where is the agreement of "direct, immediate, and irreparable harm" that is required to sustain a government attempt at prior restraint. And, we ask, why has the administration not sought to correct any deficiencies in law through Congress, as required by the United States Constitution, rather than unilaterally usurping the law-making powers of the legislative branch?

H.R. 4681

As previously stated, in October of last year and February of this year AFGE presented extensive testimony documenting the dangers and unreliability of polygraph examinations and pre-publication review agreements before the House Committee on

Government Operations, Subcommittee on Legislation and National Security, chaired by the Honorable Jack Brooks and before the House, Post Office and Civil Service Committee chaired by the Honorable Patricia Schoeder. At that time, we explained that there was a desperate need for legislation that would stop agencies from implementing President Reagan's March 1983 directive. We feel, despite the assurances of Ambassador McFarlane and Gen. Stilwell, that the need for immediate congressional action is no less urgent.

H.R. 4681 is a well-balanced and sensible legislative proposal that fully protects the legitimate need of the Government to investigate unauthorized disclosures of classified information. At the same time, the Bill prevents the uncontrolled expanded use of polygraph examinations that are known to be notoriously and dangerously unreliable. The involuntary submission to lie detector devices and the coerced requirement of pre-publication censorship reviews are correctly branded as abhorrent in a free society in light of the well-documented risk of errors in polygraphs and the constitutional prohibition against prior restraint. This legislation would also clearly be effective inasmuch as it provides employees with the right to pursue specific judicial remedies for any violations of this law.

Finally, by providing the CIA and National Security Agency with an exemption from its provisions, this legislation continues the current polygraph and pre-publication practices in

the most security sensitive government agencies.

RECOMMENDATION

AFGE believes that this nation should be governed by rules of substantive law and not through the administrative utilization of fear, threat, or chilling directives. If a disclosure is illegal, it should be prosecuted. If it is not illegal, but merely embarrassing to some partisan political interests, employees should not be threatened with a morass of unreliable and chilling investigatory techniques and contractual civil suits as part of a broad program to undo the First Amendment or whistleblowing protections of the Civil Service Reform Act.

To this end H.R. 4681 would block the administration's dangerous efforts to expand its use of polygraphs and pre-publication censorship. H.R. 4681 is a well-balanced proposal that would protect and codify the Government's legitimate need to investigate unauthorized disclosures of classified information and for all intents and purposes continue the current policy on polygraphs and pre-publication review agreements where arguably necessary -- the CIA and NSA. On the other hand, the Bill provides for sufficient protections for the federal work-force as well as effective remedies that will deter those intent on violating employees' basic constitutional and human rights.

Mr. Chairman, H.R. 4681 should be implemented into law as soon as possible. By providing specific employee remedies, such

as damages, temporary injunctive relief, and attorney's fees, when this law is violated, H.R. 4681 has the necessary "teeth" to deter even this administration from pressing on and showing its normal disdain for the legislative process as it did recently in October when Mr. Devine, Director of the Office of Personnel Management, implemented a host of unwise and controversial federal personnel program changes in spite of a Congressional bar. The Courts have reversed Mr. Devine's callous disregard of congressional action.

In our previous testimony we have called for the type of legislation now before you.

Mr. Chairman, thank you for giving us the opportunity to express our views.